

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

KEVIN OSTERBERG &)
MARILYN ASH,) DOCKET NO.: PT-2003-38
Appellants,)
-vs-) FACTUAL BACKGROUND,
THE DEPARTMENT OF REVENUE) CONCLUSIONS OF LAW,
OF THE STATE OF MONTANA,) ORDER and OPPORTUNITY
Respondent.) FOR JUDICIAL REVIEW

The above-entitled appeal was heard on August 19, 2004, in Havre, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. Kevin Osterberg appeared on behalf of the taxpayers. Appraiser Susan Witte and Marlyann Lawson and Area Manager, Nita Grendal, represented the Department of Revenue (DOR).

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the taxpayer and the Department of Revenue, and exhibits from both parties were received.

The Board modifies the decision of the Hill County Tax Appeal Board.

FACTUAL BACKGROUND

1. Due, proper, and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The subject property is residential in character and described as follows:

Land and improvements described as Tracts 3 & 4, COS 511026, to the City of Havre at 1104 & 1115 4th Street North, County of Hill, State of Montana. (Assessor ID #: 997)

3. For tax year 2003, the Department of Revenue appraised the subject land at a value of \$10,226 and \$33,874 for the improvements.

4. The taxpayer filed an appeal with the Hill County Tax Appeal Board on December 3, 2003, requesting a land value of \$0, and the improvements at salvage value, stating the following reasons for appeal:

This property is located on the diesel fuel contamination plume from the BNSF rail yard. The property has been appraised with a value of 0 for the land and limited salvage for the improvements.

5. In its December 19, 2003 decision, the county board denied the taxpayers' appeal, stating:

The property has been already adjusted down to fair.

6. The taxpayer then appealed that decision to this Board on January 13, 2004, citing the following reason for appeal:

I have been overtaxed on this property since 1995. The property has been appraised at a market value of \$0. This leaves us with the use/value method to determine taxes. The Department of Revenue appraiser has admitted the she has no method to determine use value.

TAXPAYERS' CONTENTIONS

Mr. Osterberg testified that the property consists of two lots that were combined into one assessment by the DOR for the current appraisal cycle.

Mr. Osterberg testified that the subject property is affected by ground contamination of diesel fuel as a result of the Burlington Northern rail yard. The contamination plume is present on approximately half of the southern portion of the property. A class action lawsuit was brought against the railroad and the settlement that was reached was not disclosed, but independent fee appraisals were done on the subject property. Taxpayers' Exhibit's #2 and #3 are copies of the independent fee appraisals. These appraisals suggest the following values:

Exhibit	#2	#3
Date of Value	8/17/2002	8/17/2002
Total value without contamination	\$12,400	\$60,000
Total value with contamination	\$0	\$0 plus limited salvage value

The taxpayer testified that Burlington Northern Santa Fe (BNSF) has a first right of refusal of purchasing the subject property.

It is Mr. Osterberg's opinion that the DOR's method of determining the value is flawed because the comparable properties selected to value the subject property are not affected by ground contamination. It is also the opinion of the taxpayer that the fact that BNSF has a first right of refusal for the property at a value that suggests no environmental issues should not be considered because the property is impacted. Therefore, the total value for the property of \$72,400 is moot.

The taxpayer does not dispute that the property does have some value because it is being used as a residence. It is his opinion the DOR's appraisal methodology over states the actual "use" value.

DOR'S CONTENTIONS

Pursuant to an AB-26 form filed by the taxpayer, requesting an informal review for the subject property, the DOR reduced the land value from \$19,376 to \$10,226, and the improvements from \$42,785 to \$33,874.

The appraisal method employed by the DOR to establish the market value for the subject property was the sales

comparison approach as depicted on exhibit C. Summarized,
this exhibit illustrates the following:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5
Dwelling Description						
Total Rooms	6	5	5	5	10	5
Bedrooms	3	3	3	3	5	2
Bathrooms	1	1	1	1	3	1.5
Yr. Built/Eff. Age	1930/1980	1925/1970	1925/1970	1920/1980	1929/1980	1915/1980
# Of Stories	1	1	1	1.5	1	1.5
Quality Grade	4	4	4	4	4	4-
Condition/Desirability/ Utility	Fair	Fair	Fair	Fair	Average	Average
1 st Floor Area	1,488	1,604	1,604	1,014	1,120	1,266
2 nd Floor Area	0	0	0	0	0	0
Half Story Area	0	0	0	480	0	384
Total Living Area	1,488	1,604	1,604	1,374	1,120	1,554
Basement Area	384	0	0	930	1,568	672
Finished Basement	0	0	0	0	1,120	0
Finished Basement Quality	None	None	None	None	Typical	None
Detached Garage	0	0	0	192	0	576
Attached Garage	0	520	520	0	1,196	0
Land Description						
Total Acres	1.95	.19	.19	1.12	.14	.16
Valuation						
Sale Date		9/2001	9/2000	12/1998	9/2001	8/2001
Sale Price		\$40,000	\$38,000	\$50,000	\$80,000	\$66,000
MRA Estimate	50,815	\$49,029	\$47,955	\$54,756	\$88,032	\$68,723
Adjusted Sale		\$41,785	\$40,859	\$46,058	\$42,782	\$48,091
Comparability		71	73	86	137	143
Weighted Estimate	\$43,325					
Market Value	\$44,100					
Field Control Code Indicator	2					

The DOR testified that none of the sales illustrated on
exhibit C are located within the area affected by the ground
contamination. The DOR did provide two land sales and seven
improved sales that BNSF was involved in (exhibit G).
Summarized, this exhibit illustrates the following:

Improved Sales	Sale #1	Sale #2	Sale #3	Sale #4	Sale #5	Sale #6	Sale #7
Sale Date	8/28/2003	8/18/2003	8/28/2003	12/3/2003	12/1/2003	12/3/2003	12/3/2003
Sale Price	\$67,566	\$115,000	\$42,000	\$51,000	\$30,500	\$28,000	\$48,500
Land Size (ac.)	.19	.934	1.108	.11	.17	.17	.17
Land Value	\$3,600	\$9,664	\$9,759	\$2,451	\$3,080	\$3,135	\$3,384
Year Built	1910	1973	1940	1912	1930	1920	1950
Effective Age	1975		1985	1980	1965	1975	1980
Style	Old Style	Mobile Home	Old Style	Old Style	Old Style	Old Style	Old Style
Quality Grade	3	Average	3	4	4	4	3
CDU	Average	Average	Average	Average	Very Poor	Fair	Fair
# of Bedrooms	3	2	2	4	4	4	1
Basement Area	378	0	414	0	576	448	672
Finished Basement Area	0	0	0	0	576	0	0
Total SF	1,029	1,440	828	880	1,032	598	672
Improvement Value	#35,700	\$68,210	\$34,541	\$44,940	\$22,910	\$23,965	\$24,516
Total DOR Property Value	\$39,300	\$68,210	\$44,300	\$47,391	\$25,980	\$27,100	\$27,900
Vacant Land Sales	#1	#2					
Land Size (ac.)	.17	.18					
Sale Date	3/26/2004	3/10/2004					
Sale Price	\$10,800	\$8,000					
Price/Acre	\$63,529	\$44,444					

The DOR's exhibit F is the calculation of the subject property's CDU (Condition/Desirability/Utility). The calculation for the CDU as illustrated on the exhibit is as follows:

Condition	=	7	X	1	=	7
Desirability Location	=	5	X	1	=	5
Desirability	=	5	X	1	=	5
Utility	=	7	X	1	=	7
Total						24

$$24 / 4 = 6 \text{ (Fair)}$$

Excellent	10
Very Good	9
Good	8
Average	7
Fair	6
Poor	5
Very Poor	3
Unsound	1

It is the opinion of the DOR that based on the market data available, and CAMAS (Computer Assisted Mass Appraisal System), the best indication as to the market value for the subject property is \$44,100.

BOARD'S DISCUSSION

The taxpayer asserts that the value of \$72,400 as result of the independent fee appraisal should not be considered. This value is for the property as though there are not environmental issues. The property's value is impacted by the presence of the diesel fuel and the market value is severely impacted as a result. The taxpayer does not dispute that property , in use, does maintain a value.

The subject property at the present time being used as a residence, and therefore, has a value greater than \$0 plus salvage as stated on the appeal form.

Based upon the testimony and exhibits presented, BNSF has been and is still purchasing properties that are within and adjacent to the contaminated area. It appears from the exhibits and testimony that the amounts that BNSF is paying for those properties are based upon market data of property not affected by the soil contamination.

It is the opinion of the Board that the subject property does have value and an appraiser would look to the market for the appropriate value determination and make differential adjustments. The DOR identified sales of property not affected by the soil contamination to value the subject. One of the methods the DOR uses to addresses differences between a property being appraised and the comparables selected to appraise that property is the application of the CDU. It is the opinion of the Board that the DOR's determination of the CDU of "Fair" does not sufficiently take into account the presence of the ground contamination. As noted on exhibit F, the DOR determined the desirability or location factor of the CDU to be poor or 5. It is the Board's opinion that this factor should be 3 or "very poor" because of the environmental impact. In

recalculating the CDU as illustrated on Exhibit F, an overall CDU of “poor” is determined as follows:

Excellent	10	<div></div>	Condition	=	7	X	1	=	7
Very Good	9		Desirability Location	=	3	X	1	=	3
Good	8		Desirability	=	3	X	1	=	3
Average	7		Utility	=	7	X	1	=	7
Fair	6		Total						
Poor	5								
Very Poor	3				20 / 4 = 5		(Poor)		
Unsound	1								

The DOR will change the CDU from “fair” to “poor” and market model the subject property through CAMAS.

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CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301, MCA.
2. §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. The appeal of the taxpayer is granted in part and denied in part and the decision of the Hill County Tax Appeal Board is modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Hill County by the local Department of Revenue office at a value pursuant to a change in the CDU from "Fair" to "Poor". The DOR will also inform the taxpayer and this Board of the value that is generated pursuant to this change within ten days of this decision. The notification is to be made by a new CAMAS document that depicts the revised value. The decision of the Hill County Tax Appeal Board is modified.

Dated this 3rd day of September 2004.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

JOE R. ROBERTS, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of September, 2004, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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